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FAIR POLITICAL PRACTICES COMMISSION

July 24, 1997

Hon. Richard G. Polanco
Senator
Senate California Legislature
State Capitol, Room 2032
Sacramento, California 95814

**Re: Your Request for Advice
Our File No. I-97-347**

Dear Senator Polanco:

This letter is a response to your request for advice about the Political Reform Act (the "Act").¹ Because your request does not refer to specific persons or events, we provide informal advice. Informal advice does not confer immunity under Section 83114. (Regulation 18329(c).)

QUESTIONS & ANSWERS

1. *May a member of the State Legislature be named and act as co-chair for a fundraising event and solicit contributions to retire previous campaign debt for another member of the State Legislature?*

Yes, a legislator may act as the co-chair of an event to raise funds to retire campaign debt of a fellow legislator, and may solicit contributions to the same end. (The legislator acting as co-chair and soliciting contributions will be referred to as the "soliciting legislator," and legislator on behalf of whom the fundraising is undertaken will be referred to as the "benefitted legislator.")

However, the consequences of doing so must be carefully considered. The soliciting legislator may incur expenses while acting as co-chair and soliciting contributions for the benefitted legislator. (For example, if the soliciting legislator solicits contributions by telephone, someone will have to pay the phone bill for those calls.) The payment of such expenses may constitute contributions to the benefitted legislator. Depending upon who makes the payments to cover the expenses, and upon the total amount of the payments, a violation of the Act's

¹ Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations.

contribution limits could occur. (See Sections 85301 *et seq.*) Also, depending upon *when* they are made, a violation of the "blackout" provisions in Section 85305 may occur.

Under the Act, a contribution is "a payment made for political purposes for which full and adequate consideration is not made" (Regulation 18215(a).) A payment is for political purposes if: (1) it is "[f]or the purpose of influencing or attempting to influence the action of the voters;" or (2) "[r]eceived or made at the behest of" a candidate or his or her agents. (Regulation 18215(a)(1),(2).) Made at the behest of means "made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of" the candidate or his or her agents. (Regulation 18225.7.)

As explained above, the soliciting legislator may incur expenses while acting as co-chair and soliciting contributions on behalf of the benefitted legislator. The benefitted legislator's campaign committee may pay these expenses incurred by the soliciting legislator. If so, the payment would be simply a campaign expenditure, and, of course, no contribution results.² However, the *soliciting* legislator may *not* pay the related expenses from his or her *campaign* funds. This would constitute a contribution of campaign funds from one candidate to another, which is forbidden by Section 85306.³

Turning to other contribution-related issues, the value of the soliciting legislator's time spent acting as co-chair and soliciting contributions does not constitute a contribution from him or her to the benefitted legislator because "volunteer personal services" are excluded from the definition of contribution. (Regulation 18215(c)(2).) If the legislator voluntarily undertakes the co-chair and solicitation responsibilities and does not expect any repayment for his or her undertaking, then the exception applies and no contribution results from him or her to the benefitted legislator.

Finally, contributions to the benefitted legislator resulting from the soliciting legislator's efforts do not constitute contributions to the soliciting legislator either. Ordinarily, payments made at the behest of a candidate are contributions to the behesting candidate regardless of to whom the payment is made. (Regulation 18215(a)(2).) However, there is an exception to the definition of contribution for fundraising undertaken on behalf of another candidate. (Regulation 18215(d).) Under this exception, a contribution to another candidate made at the behest of the soliciting candidate is not a contribution to the soliciting candidate.

² If the benefitted legislator pays the expenses from his or her *personal* funds, a contribution from him or her to his or her campaign would result. However, a candidate's contribution of his or her personal funds to his or her own campaign are not subject to the Act's contribution limits. (Section 85301.)

³ The soliciting legislator may pay the expenses from his or her *personal* funds. The payments would be a contribution from the soliciting legislator to the benefitted legislator. Such a contribution of a candidate's personal funds to another candidate is specifically authorized by the Act. (Section 85306, final sentence.) However, such contributions would be subject to all applicable contribution limits. (See Sections 85301 *et seq.*)

2. *What is the definition of a "lobbyist employer?"*

3. *What is the difference between a "lobbyist employer" and the "lobbyist's client?"*

The Act establishes a comprehensive scheme to regulate lobbying. Under that scheme, a "lobbyist" is, by definition, an individual. (Section 82039; Regulation 18239.) All lobbyists, by definition, work for either a "lobbying firm"⁴ or a "lobbyist employer." A lobbying firm is a business which lobbies on behalf of other persons, usually on a contract basis. (Section 82038.5; Regulation 18238.5.) A lobbyist employer is a business with a lobbyist or lobbyists on the payroll who work on behalf of the employer *only*. (Section 82039.5; Regulation 18239.5.)

A good example of a *lobbyist employer* is a trade association with a lobbyist on its payroll who lobbies on behalf of the trade association only. On the other hand, the trade association may contract with an outside *lobbying firm* (which also has many other clients) to lobby on behalf of the association.

The term "lobbyist's client" is not defined in the Act. When referring to a "lobbyist's client," one might be referring to the person who contracts with a lobbying firm for lobbying services; or, one might be referring to the lobbyist employer of whom the lobbyist is an employee. Hereafter, for the sake of clarity, we will refer to the former as a lobbying firm's client, and the latter as a lobbyist employer.

4. *May a member of the State Legislature solicit contributions from a lobbyist's client? What are the restrictions, if any?*

In answering this question, we will refer to and distinguish between a "lobbying firm's client" and a "lobbyist employer." (See the answers to questions 2 and 3, above.) Proposition 208 added certain restrictions on the solicitation or acceptance of contributions "from, through, or arranged by" lobbyists. (Sections 85704, 85313(c).) Section 85704, which pertains to both campaign contributions and officeholder account contributions, provides:

"No elected officeholder, candidate, or the candidate's controlled committee may solicit or accept a campaign contribution or contribution to an officeholder account from, through, or arranged by a registered state or local lobbyist if that lobbyist finances, engages, or is authorized to engage in lobbying the governmental agency for which the candidate is seeking election or the governmental agency of the officeholder."

Note that Section 85704 refers only to lobbyists, not to lobbying firms or to lobbyist employers.

⁴ Note that an individual contract lobbyist, i.e., a lobbyist operating his or her own lobbying practice as a solo, is included within the definition of "lobbying firm." (Section 82038.5.)

Section 85313(c), which pertains specifically to officeholder account contributions, provides:

“No elected officeholder or officeholder account shall solicit or accept a contribution to the officeholder account from, through, or arranged by a registered state or local lobbyist or a state or local lobbyist employer if that lobbyist or lobbyist employer finances, engages, or is authorized to engage in lobbying the governmental agency of the officeholder.”

Note that Section 85313(c) explicitly applies to lobbyists *and* lobbyist employers. (Cf. Section 85704, above, which applies only to lobbyists.)

Finally, note that both Sections 85704 and 85313(c) apply only to contributions from, through, or arranged by a lobbyist who “finances, engages, or is authorized to engage in lobbying” the recipient of the contribution. For example, a registered state lobbyist who never lobbies his or her local city council may personally contribute to city council candidates, and arrange such contributions by others.

The Commission recently adopted Regulation 18626 which interprets and implements these statutory lobbyist contribution restrictions. In the context of your question, please note in particular subsection (d), which elaborates specifically on *solicitation* of a contribution from, through or arranged by a lobbyist:

“(d) Solicitation of a contribution from, through, or arranged by a registered state or local lobbyist, within the meaning of Government Code Sections 85704 and 85313(c), includes but is not limited to:

(1) Solicitations directed to a lobbyist for further transmittal or forwarding to the lobbyist’s client or employer.

(2) Solicitations directed to a lobbyist’s client or employer, but sent ‘in care of’ the lobbyist.” (Regulation 18626(d).)

Thus, a candidate may solicit *campaign* contributions *directly* from a lobbying firm’s client or from a lobbyist employer. By “directly,” we mean the solicitation must go from the soliciting candidate to the potential contributor, without any intervention by a lobbyist.⁵

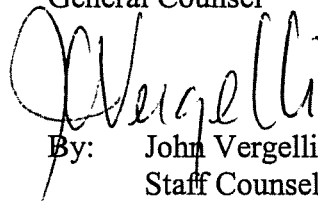
⁵ Once a solicitation is thus properly made, the lobbyist may advise his or her client about whether to make the contribution. (Regulation 18626(c)(2).)

Turning to solicitations for *officeholder account* contributions, the situation is slightly different. Section 85313(c)'s restriction applies explicitly to lobbyists and lobbyist employers, whereas Section 85704's restriction applies only to lobbyists. Thus, an officeholder may solicit an officeholder account contribution *directly* from a lobbying firm's client(s), but may not solicit officeholder account contributions from a lobbyist employer. Again, by "directly," we mean the solicitation must go from the soliciting officeholder to the potential contributor, without any intervention by a lobbyist.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell
General Counsel

A handwritten signature in black ink, appearing to read "Vergelli", is written over the typed name and title of John Vergelli.

By: John Vergelli
Staff Counsel, Legal Division

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